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THE INTERNATIONAL LAW OF THE GALlic CAMPAIGNS

BY MAX RADIN
Newtown High School, New York City

We understand by the term "international law" a series of rules by which nations have agreed to regulate their conduct with one another. The agreement, however, is not an actual, but a constructive, one. Most of these rules have never been formally accepted by the nations concerned. The agreement is inferred from the fact that the rules have been constantly obeyed, or that a violation of them has been denounced or treated as a ground for war, or that the enforcement of them to the nation's detriment has passed without protest.¹

Now, there never was a time in the history of our Mediterranean civilization—as far as even the scantiest of our records go—when such rules were not in existence. At all times, therefore, the races of that civilization have possessed an international law. When we reach the time of Roman supremacy, that law had already become highly complex, because international relations in other respects had become complex.² The theoretical formulation of these rules was never attempted by Romans for the reason that national lines were themselves becoming first blurred and then effaced under the rapidly centralizing tendencies of the Roman imperial system.

It was, however, always apparent that international law was different from other law. The difference lay in the sanction. The

¹ Oppenheim, *International Law*, I, 17: "The customary rules of this law have grown up by the common consent of states." In so far as the agreements of the Hague Conferences are accepted by the various states, and confirmed by the judicial action of the Hague tribunal, or the judiciaries of the several states, international law will tend to take a statutory form.

² The statement that Rome had no international law, as we understand it, or that the *ius fetiale* was the Roman equivalent of it, is based on a curious misunderstanding of the sources. Only a few modern writers repeat the statement, but it still finds its way into handbooks. Cf. T. J. Lawrence, *Handbook of Public International Law* (1912), p. 12.

violation of other law subjected the offender to some definite penalty. The violation of international law did not seem to do so. And this difference has to many seemed so vital that it justified the denial of the term "law" to the rules governing international conduct. However, that difference can be overemphasized. We may, after all, construct a sanction for international law in the fact that its violation may lead to war or to hostile measures short of war. And, if it is objected that such a penalty can be enforced only if the aggrieved nation happens to be equal to the other in strength or superior to it, it may be replied that in the case of other laws the penalty is often not enforced because of the negligence or incompetence of the executive. At worst, therefore, international law has the same claim to be considered law as the law of badly governed communities. And while to resemble a badly governed community is no very lofty ideal for the commonwealth of nations, it is something better than frank and undisguised anarchy, and at least contains the promise of improvement.¹

The Romans had no specific name for international law. They knew it as part of the *ius gentium*, i.e., as part of those legal institutions which all or at any rate most nations had. Just as slavery was an institution of the *ius gentium*, because all nations known to the Romans possessed it, so the inviolability of ambassadors was such an institution. The Romans classified their terms differently from ourselves. But that they recognized the concepts involved is apparent from their whole history, and appears specifically in such phrases of the *Digest* as that of Hermogenianus (*Dig.* i. 1. 5): "ex hoc iure gentium introducta bella, discretae gentes, regna condita."²

What was the source of this branch of the law for the Roman and for ourselves? It has been seen that there never was an enactment of it within the nations concerned. The source can be discovered only in practice. When Grotius laid the foundations

¹ Some discussion of this matter is found in every manual of international law. Cf. especially the article in the *Encyclopaedia Britannica*, s.v.; Maine, *International Law*, p. 50; and Amos, *Science of Law*, p. 253.

² Gaius *Dig.* xi. 1. 5. 7: "Quae ex hostibus capiuntur, iure gentium statim capientum fiunt"; Sallust *B. Jug.* xxxv. 7: "fit reus magis ex aequo bonoque quam ex iure gentium Bomilcar."

of the science of international law, his categories were framed in broad and general terms, but, in the main, they were classification of actual practice, often justified and explained by reference to moral theories, but occasionally left as irrational precedents.¹ The precedents are not necessarily of yesterday or the day before. Some of them are thousands of years old. But their validity or invalidity will depend, not on their nearness or remoteness in time, but on the similarity or dissimilarity of the physical conditions which surround the act they are designed to regulate.

Accordingly, when we deal with the international law observed by Caesar in his Gallic campaigns, we are by no means dealing with facts of purely historical interest. The precedents then created are precedents of international law—ours as well as that of the Romans. If a modern belligerent were to disregard a rule consciously followed by Caesar, the justification would lie in the fact that the conditions of modern warfare had changed so radically in the particular respect covered by that rule, that its observance would no longer be expedient. And, in that case, the rule would probably have been abrogated by deliberate and continued neglect since Caesar, or by a counter-practice, later than Caesar's and inconsistent with it. The burden of proof would rest with the belligerent that violated the rule.

International law, further, has this in common with all forms of law, that it is not its abstract formulation that is to be considered, but its interpretation, whether in words or acts.² And this interpretation, which alone invests law with any real significance, brings into play the personality of the interpreter. Active leaders of men are constantly confronted with the problem of adapting a formula

¹ Grotius' book, *De Jure Pacis et Belli Libri III*, was published in 1625. The modern science of international law is generally regarded as beginning with it. But the early civilians and canonists recognized the *ius gentium* as regulating the relations between nations both in war and in peace. So Gratian *Decretum* D. i. 9 (following Isidore Hisp. v. 6): "Jus gentium est sedium occupatio, aedificatio, munitio, bella, captivitates, servitutes, postliminia, federa pacis, induciae, legatorum non violandorum religio, connubia inter alienigenas prohibita.

² Statutory law has always been jealous of interpretative processes and has sought to prevent them, often with severe penalties. Cf. *Constit. Tanta* 21; Amos, *Science of Law*, 61. In every case these attempts have been futile. In the case of a body of law concededly customary, interpretation is not merely permitted, but essential.

to life, and they must do so in accordance with the laws of their own character. Some men, for example, are legalists by nature, and prone to a certain pedantry in following legal rules. But Caesar was distinctly not a legalist. On the contrary, like many other men of first-rate genius, he was essentially revolutionary in his temperament and methods. Besides, his political training had been gained in the Gracchan revolutionary tradition. Formulas, legal or otherwise, doubtless tried his patience. Nor did he always seek to disguise his disregard of them by evasion. His intellect was too sharp and his Latin sense of reality too strong to permit him to palliate the unpleasantness of a fact by the tacit convention that it had not taken place.

And yet Caesar was a Roman, and something of the anxious pedantry of Roman stratecraft had been acquired by him from his political experience. It cost him a struggle to confess that in any given case he was deliberately overriding established law. The Nietzschean doctrine of "Beyond Good and Evil" would have stuck in the throat of this Roman superman. There is a common stereotype picture in the minds of many, depicting the Roman as a rigid and bowelless exemplar of hard efficiency. That is more ludicrously inadequate here than elsewhere, when it is attempted to be forced upon this sensuous, cultivated, and humane gentleman, who happened also to possess one of the most incisive intellects of all time.

Given such a man, and a body of phenomena of the kind indicated, how were they applied in the great Gallic War that founded Caesar's prestige and power?

We must first gain a clear notion of Caesar's position at the beginning of the year 58 B.C. He was governor of Gaul, i.e., he was the wielder of the supreme *imperium pro consule* within the two provinces of Farther and Hither Gaul, to which had been added a less defined territory along the eastern Adriatic, known as Illyricum. The Latin word *provincia* is essentially abstract. It denotes rather a limitation of functions than a definite territory, though it is often loosely used in the latter sense. It is really somewhat akin to what we shall meet later as the "sphere of influence" of modern international law, although the method in which

the "influence" is protected was more open and direct than it is in our day. When we use the word *provincia* in its Latin sense, we shall have to keep in mind the following. Within a certain boundary there were groups of varied nature and origin. There were independent states, both city and territorial, some federated with Rome and others theoretically free. There were tribal communes and smaller civic centers which were the dependents either of the larger communities or directly of Rome, that dependence being indicated in the obligation of tribute or of military service. There were organized colonies of Roman citizens. There were further groups of Roman citizens scattered as travelers or merchants throughout the provinces, sometimes organized in corporate form, and sometimes not so organized. There were foreigners similarly scattered and organized. All these communities or groups had their own laws which they enforced by their own instrumentalities.

What made this heterogeneous gathering a single province? Simply the presence among them of a representative of the sovereign *populus Romanus*, elected for a definite period, and clothed with *imperium*—which may be characterized as supreme residuary power. To this representative an appeal lay from the decision or administrative act of any magistrate or official whatsoever. He might further entertain as a court of first instance any controversy between any persons either temporarily resident or permanently domiciled in the province, and he might interfere by administrative act, of his own motion, with any such person. In the case of the *liberae et foederatae civitates*, however, his jurisdiction was probably appellate only. From his decision no appeal lay to any tribunal on the face of the earth. The only check upon him was the possibility of being charged in Rome with maladministration, when his term of office was over, i.e., with violating his obligation toward the Roman state to govern its dependents properly. He was not deemed to have any legal obligations toward the provincials.

As far as Caesar's provinces were concerned, there was abundant opportunity for the application of the rules of international law within the provinces themselves. The ancient Greek city of Massalia, e.g., was an ally of Rome on terms of equality and still in theoretical possession of its power and dignity. With it there might have arisen conflicts that would have called into action the

practice and the ceremonial which Rome had instituted for such occasions. But no such conflict either with Massalia or with any other free or federated state seems to have arisen for the eight years of Caesar's government. The *imperium* of the *populus Romanus* met with ungrudging obedience.

Outside the province the Romans had established certain relationships. First of all, as early as 122 B.C.¹ the Romans had made a treaty of alliance with the Aedui and either then, or at some later time, conferred upon them the title of *fratres populi Romani*. It is expressly stated that no Gallic tribe, before or after, was so distinguished.² As allies—*socii*—there were, of course, definite mutual obligations imposed by the treaty upon Romans and Aeduans. We do not know the exact terms of the treaty, but there are indications that it abounded in honorific epithets rather than in substantial concessions on the part of Rome. It was very plainly not a defensive and offensive alliance, and while it emphasized the perfect independence and equality of the high contracting parties, it left no doubt in the minds of other nations that the relation was little different from a clientage of the Aeduans toward the Romans.³

The title of *fratres populi Romani*, to which such constant reference is made, seems to have been a mere phrase, devoid of legal significance.⁴

¹ Livy *Epit.* lxi. The Aedui are there called *socii*, and we may well assume that the alliance was made *ad hoc*, i.e., to give the Romans a pretext for attacking the Allobroges (121 B.C.).

² Tacit. *Ann.* xi. 25: "Primi Aedui senatorum in urbe ius adepti sunt. Datum id foederi antiquo et quia soli Gallorum fraternitatis nomen cum populo Romano usurpant"; Strabo iv. 2 (C. 192): οἱ δὲ Αἰδονοὶ καὶ συγγενεῖς Ὁμηλῶν ἀνομάζοντο καὶ πρῶτοι τῶν ταύτῃ προσῆλθον πρὸς τὴν φιλίαν καὶ συμμαχίαν. The inscription quoted from Gruter in the Forcellini *Lex.*, in which the Batavi are called *fratres P.R.* (Orelli 176, 177), is almost certainly a late forgery. In Pliny *N.H.* iv. 107, the Aedui are simply called *foederati*, as are also the Carnuteni. Two other tribes, the Meldi and the Segusiavi, are called *liberi* by Pliny, although Lugdunum in the territory of the Segusiavi had been a Roman colony since 44 B.C.

³ *Bell. Gall.* ii. 14. 3.

⁴ The passages quoted seem to say that other tribes, although not Gallic tribes, were at some time called *fratres*. No doubt the employment of the phrase as a term of compliment occurred in several public documents. It was often due to a legend, or perhaps gave rise to a legend, of real kinship between the peoples, as in the case of Saguntum (Sil. Ital. i. 608, 655, "Roma consanguinea Sagunti"). Lucan *Phar.* i. 427 has "Arvernique ausi Latio se fingere fratres sanguine ab Iliaco," where Arverni is used by a kind of metonymy for Aedui. Cicero often refers jestingly to "fratres nostri Aedui" (*Ad Att.* i. 19. 2; *Ad fam.* vii. 10); cf. Mommsen, *Staatsr.*, III, 589, 1153; *CIL*, VIII, 309 27 ("populum R) omanum cognatum amicum socium.")

The Aeduans treaty had been confirmed by frequent references to it in the decrees of the Senate. Further, the Aeduans had been used as one of the pretexts for aggression in Gaul almost as soon as the treaty was made. This fact of itself gave Roman influence an extension beyond the borders of the province, and the possibility of this extended influence had been expressly recognized in a *senatus consultum* of 61 B.C.¹

Besides the Aeduans, the Romans had entered into other relations in Gaul. Some years previously the *condottiere* of a band of German mercenaries had settled in Sequanian territory. In 59 B.C., at his own request, his title of "king" was recognized by the Senate and he was further officially styled *amicus populi Romani*. This established between him and Rome the relation of *amicitia*. While this involved no more definite legal rights than *fraternitas* or *fraternum nomen*, it did create certain reciprocal, if vague, duties.² Other kings, at various times, had had their titles recognized by Rome, but there was no other case of *amicitia* still subsisting in 58 B.C.³

Further, about 121 B.C., Q. Fabius Maximus conquered the Allobroges and, at the same time, the Arverni and Ruteni. The Allobroges were ultimately incorporated into the province. The

¹ *Bell. Gall.* i. 35. 4.

² Cf. an article by Neumann in the *Pauly-Wissowa Realencycl.*, I, 1832. Cicotti, *s.v. amici*, in Di Ruggiero, *Diz. Epig.* Pomponius, commenting on Quintus Mucius, enumerates *amicitia*, *hospitium*, *foedus*, as the three relations that may subsist between nations at peace (*Dig.* xlix. 15. 5. 2). The ancient treaty between Rome and Carthage established φίλα not συμμαχία; cf. Polyb. iii. 22. 24. *Amicitia* established by treaty as between the Romans and Carthage in the instance cited, between the Romans and Antiochus (Polyb. xxi. 45), between the Romans and Rhodes (Polyb. xxx. 5), is, of course, a different thing from the informal *amicitia* derived from a honorific locution in a decree of the Senate. None the less, the latter also established the relation. We have preserved a *senatus consultum* of such a kind in the *S.C. de Asclepiade*, *CIL*, I, 203; Bruns, *Fontes*, 167. Only the Greek part is preserved in full, vss. 10-11: έδοξεν Ἀσκληπιάδην Πολέμων Μεγάλον διδρασ καλόντος καὶ ἀγαθῶντος φίλους προσαγορεῦσαι; cf. vs. 24: "(uteique Q. Lutatius, M.) Aemilius cos., a.a., s.e.v. eos in amicorum formulam referudos curarent, eis (que tabulam aheneam amicitiae in Capitolio ponere)." It is just such a *relatio in amicorum formulam* that the Senate had probably voted in the case of Arioivistus; cf. "referre in sociorum formulam" (*Livy* xlivi. 6).

³ Catamantaloedis, the Sequanian, had received similar recognition (*Bell. Gall.* i. 3. 4); also, Ollovico, king of the Nitobroges (*ibid.* vii. 31. 5).

others had not been so incorporated, but the fact of the conquest gave Caesar an argument in his negotiations with Ariovistus.

Finally, while the Allobroges were within the confines of the province, some Allobrogian villages were still outside of it and the inhabitants of these villages were in constant communication with the rest. There were also Allobrogian *possessiones*, which ought to mean tribal land used either for pasture or for agriculture and perhaps leased out to individuals or communities, across the Rhone.

This was the situation, as far as foreign relations were concerned, that Caesar found when he entered Gaul. With one foreign tribe, the Helvetians, he came into immediate conflict, and that conflict presents a number of interesting questions.

Caesar treats the Helvetians as at war with Rome. Upon what grounds? No declaration of war or of warlike intentions had come from them. Their only pronouncement on the subject had been a formal disavowal of such intentions. We hear, it is true, that they had decided to treat with the Allobroges separately and force a passage if it was not conceded (i. 6. 3), but that is a purpose inferred by Caesar. He gives us no hint of his evidence for it. The conduct of the Helvetians had been scrupulously correct. A formal and conspicuously honorable legation waited upon the commander (i. 7. 3), assured him of their peaceful intentions, and asked for what they themselves acknowledge to be a privilege.

But without a declaration on either side, had the Helvetians committed an act of war? Caesar maintains they had done so (i. 14. 3). He cites three such acts. First, they attempted an actual invasion of Roman territory (i. 8. 4); secondly, they seized and destroyed property belonging to Roman allies, the Aeduans, and to Aeduan clients (i. 11. 3, 4); and, thirdly, they seized and destroyed property which, though outside of the province, belonged to a people actually subject to Roman *imperium*, the Allobroges, and therefore with a primary claim on Roman protection.

These acts are undoubtedly hostile. To attack a rampart manned by Roman troops on Roman territory—as Caesar asserts the Helvetians did (i. 8. 4)—is to make war on Rome, if the attack was authorized or connived at by the responsible authorities. It is, however, far from clear that it was. Not only were there four

distinct tribes in this horde, the Rauraci, Latobrigi, Boii, and Helvetians, but the four Helvetic cantons probably had a separate military organization. The attack may have been the work of a few individual hot-heads. Caesar mentions no casualties. Nor had the Helvetians been given the least opportunity of clearing themselves or of offering reparation. Even if there was no assessable damage, at least a formal satisfaction might have been demanded.¹

On the second point Caesar professes to be carrying out his obligation to the *amici fratresque populi Romani*. An Aeduan embassy has duly complained of the outrages of the Helvetians. But here again *non constat*, but the Helvetians would have disavowed the act and offered reparation. It is demanded of them after the slaughter of the Tigurini. Why not before?²

But the very occurrences are not free from doubt. The ambassadors allege serious grievances. Their fields have been devastated, their children kidnapped, their towns stormed (i. 11. 3). These words are almost obviously rhetorical. The Helvetians (indeed any Gallic army) had scarcely the equipment to sack towns *en passant*. Injury of some sort was probably done. The mere passing through of three hundred and sixty-eight thousand people involved a certain amount of destruction of property. But if the Aeduan envoys are telling the truth, the temper of the Aeduans toward the Helvetians would certainly have been one of flaming indignation. And yet it plainly was far from being that. On the contrary, the active sympathy of a great many Aeduans is with the Helvetians. Not even Dumnorix' influence could have overridden resentment for such intolerable wrongs. The grain question shows

¹ As an example of how Caesar acts when he has no intention of making war, we may compare the case of the Pirustae (*Bell. Gall.* v. 1. 5-7). The Pirustae disavow: "nihil earum rerum publico factum consilio," and Caesar appoints commissioners "qui item aestiment poenamque constituant." This was a case, we may further note, of actual invasion of Roman territory and the infliction of considerable damage.

² The Ambarri, Aeduan clients, likewise complain. Ordinarily, no doubt, the rule of private law, "socii mei socius meus socius non est" (*Ulp. Dig.* xvii. 2. 20), applied also to public. But in many cases, and very likely in the case of the Aeduan treaty, the allies of the parties are specifically referred to. Cf. the treaty with Carthage, already mentioned (*Polyb. op. cit.*): ἐπὶ τούτῳ φίλατα εἴναι Ρωμαῖοι καὶ τοῖς Ρωμαῖον συμμάχοις καὶ Καρχηδονίοις καὶ τοῖς Καρχηδονίων συμμάχοις.

that the ambassadors represented, not the Aeduans people, but at most the Roman party. Some Aeduans are in constant and treasonable communication with the Helvetians. Finally, after the war, one of these divisions of marauders is welcomed by the Aeduans as valuable and desirable citizens. Is that compatible with the memory of recent outrages? And are we to suppose that Helvetians would wantonly attack the people of their *affinis* and benefactor, Dumnorix? The doubt is one that Caesar's evidence does not resolve. All that the ambassadors say, if it is true, may be the amplification of isolated acts that would become a *casus belli* only if they were done with the actual or presumed authority of the tribe.

In the case of the Allobroges, the Roman grievance may have been better founded. But usage would have demanded that the Helvetians be allowed an opportunity of peaceable adjustment, even if everything that the refugees stated were literally true.

Finally, it may be pointed out that Caesar's invasion of foreign territory in pursuit of the Helvetians precedes the complaint of the envoys, and therefore antedates his knowledge of any injuries to the Aeduans or to the Allobroges (i. 10. 5).

As acts of war the charges against the Helvetians will not bear serious examination. It is a question of intention. If Caesar had not independently intended to make war, he would have acted quite differently. But he did intend to make war, and he scarcely tries to hide the reasons. They are twofold. First, the Romans had been defeated by a Helvetian contingent nearly fifty years before, and that defeat had never been avenged. Secondly, the establishment of the Helvetians in the Saintonges territory would be a danger to the state. That is to say, the movement of the Helvetians compromised the national honor and the national safety.

The statement that the projected settlement of the Helvetians would be uncomfortably near Roman territory is, of course, eminently disingenuous. They had been much nearer in their old lands. But there was a conceivable danger in the fact that disaffected Gauls should be allowed to pick out extremely desirable land at the mouth of the Loire. On the second point, we may find it absurd that the national honor should be deemed to be impaired

by a fifty-year-old defeat—a defeat that had been allowed to remain unavenged all that time. However, to Roman prestige in Gaul it was a real and permanent *iniuria*. And no one who has read the white, green, yellow, or blue papers so recently issued will assert that this was the most absurd form in which a nation's honor has been held to be involved.¹

It is, however, only imminent danger that could have justified the attack on the Helvetians. Caesar does not claim that he regarded the danger inherent in the Helvetian migration as imminent. Without imminent danger, the strongest statements of his reasons furnish at best a dubious justification, and as a dubious justification we must leave it.²

The second campaign of Caesar introduces many new problems. And these have been fully threshed out for us in the interesting diplomatic "conversations" between no less personages than Caesar himself and the Suabian Heerfuerst.³

Between the Romans and Ariovistus there exists the relation of *amicitia*. This is recognized by Caesar in requesting a conference. His request is curtly refused in terms that almost negate the existence of *amicitia* (i. 34. 2-4). Caesar feels himself compelled to issue an ultimatum (i. 35. 3), and the demands of that ultimatum are unqualifiedly rejected. Both sides simultaneously begin hostilities.

¹ Age did not wither the Roman sense of injury. So Livy, writing under Augustus of the insolent Rhodian embassy of 169 B.C., says (xlv. 14): "ne nunc quidem haec sine indignationis legi audirive posse certum habeo."

² Convention III of the Second Hague Conference forbids nations to enter upon hostilities without a declaration of war or a qualified ultimatum. However, it is recognized that a hostile act of one nation, though constituting an international delinquency, does bring about a state of war (Oppenheim, *International Law*, II, 127). As to the rule that imminent danger excuses resort to violence, cf. *ibid.*, I, 185 f.; Pradière-Foderé, tr. of *Droit international*, I, Nos. 211-86; Despagnet, *Cours* (4th ed.), Nos. 172-75. Nor must it be forgotten that the peril of a Helvetian war, and the remoter danger of an actual invasion of Italy, had been vividly present in Roman minds for at least two years. Cf. Cic. *Ad. Att.* i. 19. 2: "Atque in re publica nunc quidem maxime Gallici belli versantur metus. . . . Helvetii sine dubio sunt in armis excursivee in provinciam faciunt; legati darent operam ne eae [i.e., Galliae civitates] se cum Helvetiis coniungerent." This was written in 61 B.C.

³ That the name "Ariovistus" is equivalent to the German *Heerfuerst*, and is rather a title than, a name is, of course, only one possibility out of many others equally plausible.

So far we have a strict observance of the form of international law as it existed then, and as it exists now. The next matter to consider is whether the issuance of an ultimatum was justified.

Following his usual procedure, Caesar discloses his motives almost immediately (i. 33). And as usual he finds the honor and the safety of the state concerned in the controversy that arises. It has at all times been admitted that questions of this nature, i.e., those that involve the honor or the safety of the state, are not justiciable.¹ If, therefore, this is such a question, Ariovistus' refusal to negotiate leaves Caesar scarcely any choice. But is it? The safety of Rome, says Caesar, cannot admit so dangerous a precedent as a successful invasion of Gaul by Germans. Such an invasion might be the beginning of another general migration like that of the Cimbri and Teutones (i. 33. 4).

The danger was real enough; but that the Romans were in law and morals estopped from setting it up seems too clear to require comment. The invasion of Gaul was no new thing. After its successful completion, the Senate had confirmed it by the recognition of Ariovistus as king and by the granting of *amicitia*. No doubt the Senate was induced to do so by the Helvetian danger, now permanently set aside; but the sudden *volte-face* that could welcome Ariovistus into Gaul one year and regard his presence as a menace the next makes us somewhat dizzy. There was, however, a new element in the situation—the arrival of the Harudes. This was a legitimate subject for *pourparler* and “conversation,” but it will be seen that, although Caesar makes the point, he does not dwell on it.

Besides the safety of the state, its honor, too, was involved. Roman allies had been forced into a humiliating peace with Ariovistus. That could scarcely help being conceded, but the sufficient answer was that the Romans had waived any claim they could possibly have on this ground by entering into relations of *amicitia* with Ariovistus with full knowledge that such a peace had been made.

¹ Treaties of arbitration at the present time generally exclude questions affecting the nation's vital interests, its independence, or its honor. The very important provision of the recent American treaties negotiated with England and France to the effect that the decision whether such a question was involved should itself be arbitrated was stricken out by the Senate.

Caesar's statements are, accordingly, pretexts which he must have recognized to be such. But whatever their value, Ariovistus has committed the blunder of furnishing an unimpeachable ground for an ultimatum. An ultimatum is considered justifiable if negotiations have been protracted to the danger point, or if they have been altogether refused. The conditions of Caesar's time do not admit of negotiations being carried on by the dispatch and answering of carefully worded notes. Negotiations were oral, if they were carried on at all. Caesar has duly presented an opportunity for them (i. 34. 1), and Ariovistus' reply makes further parley impossible.

In effect, the ultimatum contains two demands: first, "ne quam multitudinem hominum amplius trans Rhenum in Galliam transduceret"; secondly, "obsides quos haberet ab Aeduis redderet" (i. 35. 3). The first is thoroughly justified, but is practically disregarded in the subsequent discussion. The second is quite beyond Caesar's right to make. There is really no reply to Ariovistus' contention that he is enforcing acknowledged right, *ius suum* (i. 36. 3), and that Roman interference is an *iniuria* of a very measurable sort in that it lessens or threatens to lessen his revenues. There is no reply to that and Caesar attempts none. Instead, he sets his legions in motion.

A further conference occurs under highly dramatic circumstances (i. 43-45). Caesar presents the Roman case in the way already stated. Plainly, he can make no mention of the danger deemed to lie in the presence of Ariovistus himself. He stresses fully the point that Roman honor cannot permit the continued possession by Ariovistus of Aeduian hostages. Finally he demands the immediate cessation of German migration into Gaul.

Ariovistus refers again to the *ius belli* (i. 44. 2), on which he is unanswerable.¹ As to the Harudes and similar newcomers, his plea is that the apparent aggression is really a measure of self-defense—a plea with which we have grown somewhat familiar. But it is the complication introduced by the relation of the Aeduans to Rome that interests him. He finds at once the weak point in Caesar's argumentation by calling attention to the undisputed

¹ Caesar is not above citing the *ius belli* when it serves his purpose (vii. 41. 1).

fact that in very recent times the Aeduan alliance had not been interpreted as Caesar now interprets it. And finally he raises the question of priority.

Priority is, of course, a vital matter in the determination of rights in territory open to colonization or occupation, as our colonial history abundantly shows.¹ And as was the case there and more recently in Africa, priority of discovery must be carefully distinguished from priority of occupation. Ariovistus' claim that he was the first to enter the section of Gaul that is in dispute is readily enough refuted by Caesar (i. 45. 2); but Caesar himself concedes that the Romans had attempted no occupation of that territory. Now, in the fifteenth and sixteenth centuries, it was extensively held that discovery itself of territory open for appropriation conferred title. But during the nineteenth century it became established that such a title was merely inchoate, and became real only if within a reasonable time the occupation was made effective by means of the physical taking of the territory with the intention of acquiring sovereignty over it.² The question at issue between Ariovistus and Caesar is, therefore, a nice one, which would have been differently decided in Europe at different times.

The conference, we are told by Caesar, ended with a treacherous attack on the part of the Germans. As to that a certain skepticism is permissible. It is at least strange that, after such open perfidy, Ariovistus still believes that negotiations can be carried on (i. 47. 1), and still stranger that Caesar accedes to his request to send envoys to continue the discussion. But neither the treachery of Ariovistus nor his violation of the *ius legationis* can be taken as a basis for beginning hostilities. They had begun long before.

These first campaigns of Caesar have been fully treated because of their fundamental importance. Nothing can better illustrate

¹ Hakluyt, in his *Voyages*, bases the English claim to Virginia on the fact that "one Cabot and the English did first discover the shores about the Chesapeake." The claims of France to the same territory were based on the voyage of Verrazano, and those of Spain on those of Columbus. In all the cases mentioned priority of discovery only was asserted.

² Oppenhem, *op. cit.*, I, 294. The inchoate title conferred by discovery is considered a temporary bar to occupation by another state (Martens, *Nouveau Recueil général de traités*, 2d éd., X, 426) until, that is, the country claiming by discovery has had a reasonable time to attempt a physical occupation.

the nature of the law covering the matter or the way in which a man of Caesar's type would apply it. Perhaps he would have acted quite as he did if the rules of international law were wholly and unmistakably against him, but it is not at all certain that he would have done so, and he is plainly at considerable pains to bolster up his legal justification as completely as he can. In both cases he could allege technical justification, the attack on the Rhone rampart, the refusal to check further German migration. In neither case would these acts have been made a *casus belli* unless war had been determined on for reasons wholly extraneous to those alleged. That is an attitude that may be approved or not by canons of morality, but, as such, moral canons have not been incorporated into international law, even in modern times, if the continuous practice of the last five centuries is evidence of the law.¹

In one respect Caesar's practice occupies a higher moral ground than that of modern nations. It is expressly held by modern publicists that so-called uncivilized nations are at the present time outside of the application of international law—outside of the family of nations.² Caesar treats his controversy with these *barbari ac feri homines* as though it were as fully governed by *ius* as any controversy between independent sovereigns can possibly be. A persual of some modern and learned treatises on the subject might have saved him a certain amount of trouble.

¹ Professor Gray in his admirable *Nature and Sources of the Law*, p. 126, agrees with Austin that the rules of international law are simply "precepts of positive morality." That is due to his definition of law, which presupposes a court, and he consequently admits that with the establishment of the Hague tribunal (sec. 287) the rules of international law will become law "in the strictest sense." But as Professor Gray will allow the term "law" for rules that are habitually disregarded (*ibid.*, p. 103), everything depends upon the sense in which the term "court" is understood.

² The conditions under which states will be recognized as members of the "family of nations" are fully discussed in all modern books (Oppenheim, *op. cit.*, pp. 107-65). From time to time countries like Turkey and Japan, which formerly did not share that privilege, are expressly declared to be members of the family of nations. "The conduct of civilized states," we are told (Lawrence, *Handbook*, p. 4), toward other tribes than those in the family of nations, "should be regulated by the principles of justice and mercy." Hence, the massacre of Glencoe, and the slaughter of friendly and helpless Indians by Governor William Kieft of New Netherland.

The Romans also distinguished between those who were *iusti ac legitiimi hostes* and those who were not (Cicero *De off.* iii. 29. 108). But it would seem that only the *communes hostes omnium*, such as pirates, were excluded from the class (*ibid.* 107).

In the second year of his proconsulship, Caesar's position was somewhat different. His active and successful interference in territory outside of his domain made Celtic Gaul a Roman "sphere of influence," in the sense in which it is understood in modern times. Anything that threatened the *status quo*, that upset the existing balance, was as such not merely a ground for legitimate apprehension, but could be considered a *casus belli*.

Now there can be no question that the formation of the Belgian confederation disturbed the *status quo* in Gaul. Caesar asserts that the confederation was directed against Rome, but he advances no proof that it was so. Evidence that it was the case would furnish ground for intervention. There is surely no trace of an overt hostile act directed against Roman troops or territory. But modern practice has permitted the construction of hostile intent from the fact of an alliance directed against a country or group of countries. Caesar's immediate and really unprovoked attack upon the Belgian confederacy (ii. 2. 6) has accordingly the sanction of international law, if we accept his version of the aims of the league, as we must perforce do. Caesar might further have advanced the thoroughly modern doctrine that formalities are generally dispensed with in dealing with half or wholly barbarous nations. There can be no reasonable question that the Belgians were in a notably lower state of culture than the Gauls or at least the Celts, who had large and prosperous cities, industries, and developed legal and religious institutions. Indeed modern law can profitably turn to Caesar's practice in this campaign for illustrations of moderation as well as severity in dealing with hordes of undisciplinable barbarians.

The whole question of the growth of a "sphere of influence" is well illustrated in the first few years of Caesar's proconsulship. When he first came into Gaul, it is not certain that serious disturbances among a people like the Arverni would have seemed to be a matter that touched him closely. Certainly a governor of a different stamp might have disregarded them. And yet, within four years, we find Caesar invading Aquitania, Trans-Rhenane Germany, and Britain. In nearly every case the pretext advanced was that the invasion was a measure of defense. In general, such

pretexts are tenuous in the extreme, but they are to be judged, not on general principles, but on the evidence advanced for each one of them. The danger of a German invasion was close enough and there seems also to have been a real danger of interference from Britain. But the Aquitanian expedition—a casual incident of the third year—was a different matter. There seem to have been no other considerations here than those of pure expediency. Caesar does say that he sent Crasus there, “ne ex his nationibus auxilia in Galliam mittantur” (iii. 11. 3), but he does not assert that aid was actually being sent. As a matter of fact, the great disparity in blood and language between Aquitanians and Celts makes it extremely unlikely that help was being prepared. And as to that disparity Caesar is himself a witness. The expedition was frankly one of conquest. Since Spain was Roman territory, and Celtic rapidly becoming so, the wedge of land between them could not be disregarded. Caesar no doubt reckoned that in the vastly more dramatic episode of the Veneti his flagrant disregard of a law would pass unnoticed.

The conquest of Aquitania, however much in disregard of acknowledged law, would have moved few Romans to protest. We know, however, of one act that did arouse Roman indignation, even if its expression may be discounted as partisan. This was the massacre of the Usipetes and Tencteri, or, better, one of the incidents that accompanied that massacre.

The circumstances were briefly these: Caesar has advanced against an invading horde of Germans. He submits terms for the consideration of which the Germans ask delay. Caesar regards their request as a pretext and continues his advance. His troops are attacked by a party of Germans. The attack is hastily disavowed by envoys dispatched for that purpose. Caesar chooses to disbelieve the disavowal, seizes the ambassadors, and attacks and slaughters the Germans. Cato moved in the Senate that he be delivered over to the enemy, and the Senate voted a commission to inquire into his conduct.¹ The *iniustum bellum*, which Suetonius tells us Caesar did not scruple to wage, may be this single incident expanded into a class. But it is more likely that it refers to the

¹ Suetonius *Divus Iulius* 24; Plutarch *Caesar* 22.

Gallic campaigns generally, no one of which but might have been avoided by a general scrupulously intent upon maintaining Roman rights without encroaching upon those of his neighbors.

Now, what was the offense for which he was to be surrendered? *Deditio* of a Roman general had been offered before. In the case of Mancinus, that commander was surrendered to the Numantians because the Senate declined to confirm a treaty he had negotiated. That was in accordance with a definite and well-established rule.¹ It may be, too, that the waging of an *iniustum bellum* would justify *deditio*. But the term *iniustum bellum* can mean only a war carried on in wilful disregard of the Roman manner of doing so. In a case like the present, hostile action of the horde undoubtedly justified war, and the commander's discretion was of necessity final as to the tribe's responsibility for the hostile act. It cannot, therefore, have been Caesar's severity or cruelty toward the Usipetes that was in Cato's mind. But Caesar had actually seized the persons of the German envoys (iv. 13. 6), an act that he himself denounced in connection with the Veneti as putting the offender almost outside of the pale of human intercourse (iii. 9. 3), and one that gave an added element of horror to the savagery of Ariovistus (i. 47. 3, 6).² The inviolability of an envoy was one of the few almost statutorily established rules of the *ius gentium*, and the act admitted of no excuse unless the envoys were themselves guilty of violating the *ius gentium* by actual participation in hostilities.³

Here, then, was a plain case that amply justified Cato's motion. The motion may have been taken seriously as the passage in Suetonius seems to imply, but in Cicero's extant correspondence for this time there is no reference to it. At any rate, this same Senate, a few months later, granted Caesar the unheard-of honor of a twenty days' thanksgiving (iv. 38. 5). As in other countries and at other times, a brilliantly victorious general has nothing to fear

¹ Cf. Cicero *De officiis* iii. 30. 109. Besides the case of Mancinus, there was the case of the consuls Veturius and Postumius after the battle of the Caudine Forks (321 B.C.), and also the tribunes, Numicius (Livy ix. 8. 13 gives his name "Livius") and Maelius.

² Nepos *Pelopidas* 5; Tac. *Hist.* iii. 80; Cic. *In Verr.* ii. 1. 33, 85.

³ Livy v. 36. 6: "Legati contra ius gentium arma capiunt." The sack of Rome by the Gauls is, in Livy's eyes, scarcely too severe a punishment for so grave an offense.

from an incidental violation of international law, unless his political opponents are strong enough to use it as a handle against him.

During the first four years of Caesar's proconsulship, he may be said to have been constantly aggressive. He turned a "sphere of influence" into a *de facto* province.¹ For Celtic Gaul, Belgium, and Aquitania, the Romans became not merely powerful neighbors who must on no account be irritated, but actual masters. Practically all of the tribes, except a few like the Menapii (vi. 5. 4), had entered into the formal relation of *deditio*; they are *dediticii populi Romani*. They have of course no rights in the *ius civile*, but the acceptance of their *deditio* gives them rights by the *ius gentium*. They are no Helots.² Without provocation they may not be killed for fancied reasons of state, perhaps not even expelled from territory once assigned to them or left in their possession. At any rate, a Roman official who did any of these things might be held answerable at Rome.

Thereafter Caesar's measures became defensive. That is to say, he was engaged, not in increasing the *imperium*, but in consolidating it, and he did so chiefly by warding off attacks upon it. Probably it would not have needed the supreme effort of the seventh year if it had not been that the first rebellion was so nearly successful. The disaster at Aduatuca occurred, we must remember, in the first real rising of Gaul. This memorable defeat of the Roman arms could not do otherwise than fire the imaginations of all Gauls. International law, however, regulates only to a limited degree the relations that subsist between a sovereign and its rebellious subjects. The general usages of warfare are still binding, and it is principally in connection with them that we derive material for international law from Caesar's later campaigns.³

It may be said at once that the measures he took against the Eburones, the massacre at Avaricum which he did not try to

¹ The formal creation of the province by means of a *lex provinciae* had of course not yet taken place. Caesar, however, does not wait for that act in Celtic Gaul as though it were part of his province. Cf. viii. 4: "cum [Caesar] ius diceret Bibracte."

² The *servitus* which the rebellious Gauls denounce is a figure of speech (cf. vii. 77. 3). Caesar, however, himself, uses the word (iii. 10. 3): "omnes autem homines natura libertati studere et condicionem servitutis odisse."

³ Oppenheim, *op. cit.*, II, 72.

prevent, and the bloody example of Uxellodunum do not exceed in severity what international law has always permitted against tribes guilty of treachery and barbarity. Modern civilized nations have been charged with equal or greater severity under circumstances of apparently less provocation.¹ Caesar, as a matter of fact, avowed that the interest of Rome was his sole guide in his dealings with rebellious Gaul. He is clement with powerful tribes whose aid he may still need, and severe with smaller ones when he desires a drastic example. We meet again the chief difficulty in discussing international law. It has very little binding force against the more powerful of the two litigants who appear before its tribunal, except that imposed by the nation's conscience as embodied in the individual conscience of the nation's representative. It is fortunate that such a sanction is not wholly ineffective. It certainly was not in the case of Caesar. The *maiestas populi Romani* that brooked no murmur of complaint under the most trying circumstances (vii. 17. 3) would equally have allowed no *hybris*, no arrogant trampling upon acknowledged right. Caesar's sophistry, in the few cases when he may be said to do that very thing, is in itself a recognition of the existence of the law.²

There are one or two topics that are especially well illustrated in Caesar's account, and to these we may turn. Chief among these is the relation of *deditio*.

Modern wars end with a treaty of peace. The treaty recites the circumstances and sets forth the terms, i.e., the promises that the two sides make, which are mutual consideration for the permanent cessation of hostilities. That is true where one of the two sides is completely victorious and the other completely defeated, except

¹ Barclay, *Law and Usage of War*, s.v. "Reprisals," pp. 114-15; *Manual of Land Warfare* (British), sec. 458.

² A violation of the laws of war was felt by the Romans as a disgrace. Cf. Florus *Ep. de T. Livio* xxxv: "Aquilius Asiatici belli reliquias confecit, mixtis—nefas—veneno fontibus ad deditonem quarundam urbium, quae res ut maturam ita infamem fecit victoriam, quippe cum contra fas deum moresque maiorum medicaminibus impuris in id tempus sacrosancta Romana arma violasset." This act, imputed here to Manius Aquilius, has been charged against all belligerents by their enemies, and is expressly prohibited by the Hague Regulations, 23, e. Cf. also *Manual of Land Warfare*, secs. 441-51. *Fas* and *Mos* seem, therefore, to have anticipated the Hague tribunal by more than two thousand years.

when, as in the case of the Boer War, the defeated party is wholly eliminated as a nation.

Ancient wars, however, ended with a treaty of peace only when mutual concessions were to be expected. Otherwise the defeated nation had no resource but surrender, *deditio*. The surrender of an individual on the field of battle involved the personal slavery of the surrendered man. *Deditio* was, in theory, nothing more than a multiplication of such individual surrender—a group surrender. It might involve the slavery of the whole group to the conquering group or to the chief of that group, and where it did not that was originally an unconstrained act of clemency.

The defeated party asks for peace, *pacem petit* (i. 27. 2; ii. 13. 3). That is of course implied in such phrases as *de pace venire* (iv. 36), *legatos de pace mittere* (iii. 28; iv. 27). In the use of the term *pax* as equivalent to submission, we may find *implicite* the ancient and almost universal view which made independent tribes, by the very fact of their independence, hostile to one another, so that a relation of *pax* between them implied the subjection of one to the other. A treaty of peace made on equal terms was, in very ancient times, a temporary truce. It is that conception that gives us such phrases as *omni Gallia pacata*, and especially such an expression as *male pacata* (Cic. *In Cat.* iii. 22).¹

Caesar gives the formula of *deditio* in various forms: “se suaque omnia in fidem atque potestatem populi Romani permittere” (ii. 3); “in fidem ac potestatem venire” (ii. 13); “se suaque omnia Romanorum potestati permittere” (ii. 31); “se civitatesque suas Caesari commendare” (iv. 27). All these are implied in the shorter form so often found, *se dedere, in deditio nem venire* (vi. 3. 2; vi. 9. 6). Those who use it offer to become *dediticij populi Romani*,

¹ *Pax*, to be sure, ordinarily meant simply the negation of hostilities. Yet even the *pax* that the Helvetians propose to the Romans (i. 13. 3) has an element of subjection in that they promise to abide by Roman selection of a dwelling-place. In the passage from the *Digest* cited above (*Dig. xl ix, 15. 5. 2*, from Pomponius' commentary on Quintus Mucius), a *pax* which involves no subjection is expressly recognized, but even here the older theory lurks: “In pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium neque foedus amicitiae causa factum habemus, hi hostes quidem non sunt, quod autem ex nostro ad eos pervenit, illorum fit.” That is to say, the *pax*, based neither on a treaty nor on a *deditio*, has one of the essential elements of a state of war, viz., the application of *postliminium*.

a relationship which the acceptance of the offer at once creates. The offer implies a further promise *omnia imperata facturos* which so often accompanies the offer of *deditio*, and this promise may be specified as it is in the case of the Remi (ii. 3. 3).

In all these phrases it is likely that the technically exact word is *permittere*. The primary sense of the word *mitto* seems to be to "let go," "cease to exercise control." The translation "send" implies a conscious direction, which the Latin word does not contain. *Se suaque permittere*, accordingly, means that they abandoned control over their own persons and property to the conquerors.

Of the other words, *potestas* explains itself. *Fides*, on the other hand, needs a little closer study. *Fides* was a term of wide extension and great importance at all stages of Roman private and public law. Perhaps it may best be described as the self-imposed obligation of one party to a transaction to carry out what he knows the other part expects to be carried out. *In fide alicuius esse* is used by Caesar as a variant for *in clientela esse* (vi. 4. 2; vi. 4. 5). And *clientela* of one tribe to another we often meet in Caesar. The relation was plainly one of dependency, and there seems to have been no difference between the relation of the various conquered Gallic tribes to Rome and the relation of the Bituriges to the Aedui. And just as the relation and the *fides* it implied might be created by voluntary submission, so it might be created by the act of a power superior to both, as when the Suessiones, after the breakup of the Belgic Confederation, became the clients of the Remi, themselves the subjects—we may properly say, "clients"—of the Romans. For this act the word *concedere* or *adtribuere* is generally used.

It may be that the somewhat unusual word *commendare*, cited above, is used by Caesar advisedly in the passage from which it is quoted. *Commendare*, at law, was equivalent to *deponere* (*Dig.* l. 16. 186), i.e., the creation of a gratuitous bailment. Neither side has legally enforceable obligations. So in the first campaign in Britain, the *commendatio* seems to have been merely a recognition of Roman suzerainty and not a definite *deditio* involving the mutual obligations of *fides*. In the second campaign it is a full *deditio* that is demanded (v. 20. 3).

Fides, as has been said, was mutual, as was the private relationship of *clientela* on which the public one seems to have been modeled. The promise *imperata facturos* covered everything, but the duties imposed were generally tribute, military service, and attendance upon the *concilia* when they were summoned. On the part of the superior tribe, it was protection which could be demanded as a right.

To fail in any of the specific duties imposed by *fides* was *deficere*, but *deficere* implied a deliberate act, equivalent to a declaration of independence. Any failure in these obligations which was not an open *defectio* was *fidem laedere* (vi. 9), and their maintenance was *in fide manere* (vii. 10).

We have so far been dealing with the offer of *deditio*. The relation is not created till it is accepted; for which act we have the phrases *accipere in ditionem*, *recipere in fidem*, etc. It might be refused. It is refused in the case of the Verbigeni (i. 28. 1) and in the case of the Veneti (iii. 16. 4). If it is refused, those who have offered it are still *hostes* ("in numero hostium esse, in numero hostium habere"), and as *hostes* they may be and are slaughtered without violation of law, human or divine. If it is accepted, they cease to be *hostes* and become *dediticii*. Their political status must be reconstituted for them by the conqueror. It generally takes the form of restoring the former territory and permitting local autonomy, subject to the ordinary obligations of subject nations. Sometimes the autonomy is complete, and no dues of any kind are imposed *suis legibus uti iubere* (i. 45. 3), *iura legesque reddere* (vii. 76); the state is *immunis*, as in the case of the Atrebates, and the obligations of *fides* are simply moral ones.

Deditio was essentially unconditional. People became *dediticii* or they did not. The term *condicio*, so often used in connection with surrender, refers rather to the situation existing after *deditio* than to the terms upon which the Gauls agreed to surrender. Certain *dediticii* were in a more favored position than others, and it was these varying positions of surrendered tribes that could be denominated *condiciones*. So the Nervii refused in advance to agree to any *condicio pacis* (ii. 15. 5), and when Q. Cicero tells Ambiorix that it is not the custom of Rome *accipere ab hoste armato*

condicionem, he means merely that no agreement as to what the *condicio* of a subject people was to be could be arrived at as long as that people was still in arms; essentially the same thing, therefore, as the statement of Caesar, “deditio nullam esse condicionem nisi armis traditis” (ii. 32. 2). Ambiorix, in the former case, professes to desire no *defectio*. He wishes simply immunity from the presence of a Roman garrison, a privilege that many tribes, indubitably dependent, enjoyed. And Quintus sees no reason why that privilege cannot be granted. He even offers his good offices to secure it if it is made in proper form.

Two other terms, *beneficium* and *officium*, are worth examining more closely. In both cases the ordinary or literary sense of the term is apparent enough and the special meaning that it acquires in its use in public law is readily derived from its literary usage.

Caesar calls the award of *amicitia* to Ariovistus a *beneficium* (i. 35. 2) and has the same term for his personal favors to Ambiorix (v. 27. 2) and to Commius (vii. 76. 2). When Caesar sends the revolted Aeduans back to their homes, he adds “suo beneficio conservatos quos iure belli interficere potuisset” (vii. 41. 1). That is practically the primary form of a *beneficium*, an act redounding to the advantage of the *beneficiarius* which that *beneficiarius* could not have claimed as of right. Consequently in the case of an accepted *deditio*, anything done for the *dediticii*, beyond sparing their lives and their personal freedom, is a *beneficium*. When Convictolitavis grudgingly refers to the award in his favor as *nonnullum beneficium* (vii. 37. 4), he hastily qualifies it by asserting that he had obtained no more than a *iustissima causa*, i.e., no real *beneficium* at all. It is only in the general or literary sense that such an award could be so denominated, just as the advantages derived from Vercingetorix’ leadership are also called *beneficia* (vii. 20. 12).

The *officia* referred to in the course of Caesar’s narrative are the mutual duties that nations have toward each other either because of treaty, as in the case of the Aeduans, or by reason of *deditio* (v. 4. 2). They are practically all those obligations imposed by the *fides* existing in the cases mentioned. As a matter of fact, *in fide manere* (vii. 10. 3) is used in the same sense as *in officio manere*

(vi. 4. 2). And again the *vetus ac perpetua fides* of the Aeduans is different from the *recentibus belli Gallici officiis* of the Remi only in point of time (v. 54. 4).

Otherwise the word is used, as in the case of Cotta (v. 33. 2), or as representing the gratitude Ambiorix owes his benefactor (v. 27. 7), in the ordinary sense of "duty."

In concluding this examination of the international law that Caesar consciously and unconsciously followed in the campaigns in Gaul, it may not be without interest to compare a still more ancient manual which is doubtless as much a record of actual practice as Caesar's account is. In Deut. 20:10 ff., we read the following: "When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And it shall be, if it make thee answer of peace, and open unto thee, then it shall be that all the people that is found therein shall be tributaries unto thee, and they shall serve thee. And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it. And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword."

We have only to remember the case of the Aduatuci (ii. 32) to note a striking parallel between the situation in the mind of the biblical writer and the actual practice of Caesar: "Ad haec Caesar respondit: Se magis consuetudine sua quam merito eorum civitatem conservaturum: si prius quam murum aries attigisset, se dedidissent."

But a still more striking example is an incident of the very first campaign of Caesar. The Helvetians, we remember, sent ambassadors to Caesar (i. 7. 3) "qui dicerent sibi esse in animo sine ullo maleficio iter per provinciam facere, propterea quod aliud iter haberent nullum; rogare ut eius voluntate id sibi facere liceat." It is exactly the same situation that we read of in Num. 20:14 ff. "And Moses sent messengers from Kadesh unto the king of Edom, Thus saith thy brother Israel, Thou knowest all the travail that hath befallen us . . . behold, we are in Kadesh, a city in the uttermost of thy border. Let us pass, I pray thee, through thy country: we will not pass through the fields or through the vineyards, neither will we drink of the water of the wells: we will go

by the king's highway; we will not turn to the right hand nor to the left, until we have passed thy border. And Edom said unto him, Thou shalt not pass by me, lest I come out against thee with the sword. And the children of Israel said unto him, We will go up by the highway; and if I and my cattle drink of thy water, then I will pay for it: I will only, without doing anything else, go through on my feet."

In both cases permission was refused. Just as Edom threatens to come out with a sword, so Caesar says, "si vim facere conentur, prohibiturum." But alike as the incidents are, there is also a curious and instructive contrast between them. The Helvetians failed and it is Caesar's account alone that has survived. Israel succeeded and it is the Israelitish account that we have. If the dream of Orgetorix had been realized, who knows but that the Romans would have been known to us only as a churlish Edom, deservedly punished for their unreasonable perversity?